



OFFICE OF FEDERAL
PROCUREMENT POLICY

Approved For Release 2003/05/23 : CIA-RDP83-00957R000100080009-1

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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NOV 21 1979

MEMORANDUM TO HEADS OF DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Implementation of Public Law 95-507

Public Law 95-507, amendments to the Small Business Act and the Small Business Investment Act of 1958, was enacted October 24, 1978. Section 211 of the Act establishes a program for small and small socially and economically disadvantaged subcontractors under Federal prime contracts of \$500,000 or more (\$1,000,000 for construction).

Office of Federal Procurement Policy regulations implementing section 211 were published on April 20, 1979, and agency implementing regulations were published in the Federal Procurement Regulations (FPR) and the Defense Acquisition Regulation (DAR) on July 2, 1979, and July 27, 1979, respectively.

By letter dated October 19, 1979, in response to a Congressional inquiry, the Comptroller General stated his opinion that contracts of the requisite size awarded after the issuance of the FPR and DAR implementing regulations should have contained the section 211 subcontracting program provisions. He also stated his opinion that those contracts required to contain the subcontracting provisions, but awarded without those provisions, were "legally deficient." We believe that, although the implementing regulations technically were effective on July 2 and July 27, a reasonable time is required for their distribution and implementation through the system. However, it seems that in some cases the time for implementation has exceeded reasonable bounds. We understand that at the present time there are a substantial number of contracts and contract solicitations that should, but do not, contain required subcontracting provisions.

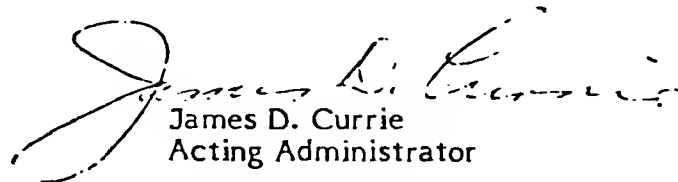
We recognize that Public Law 95-507 is a complex and difficult law to implement, and for that reason it merits special attention in each agency to assist contracting officers to comply with implementing regulations. Accordingly, I request each agency to review its contracts and contract

solicitations issued since the FPR and DAR implementing regulations were published, and:

- (1) amend all outstanding solicitations that should, but do not contain the subcontracting provisions, to include those provisions; and
- (2) where feasible, modify all contracts awarded that should, but do not, contain the subcontracting provisions, where modification to include the subcontracting provisions would lead to a greater utilization of small and small disadvantaged subcontractors.

So that we may evaluate the extent of non-compliance with the implementing regulations, and seek ways to avoid such problems in the future, I also request that each agency provide this Office by January 15, 1980, a report of (1) the number and dollar amount of contracts and solicitations requiring the subcontracting provisions that were issued without the provisions; and (2) the number and dollar amount of those subsequently modified to include the provisions.

Should you have any questions about this matter, contact Thomas F. Williamson, Associate Administrator for Acquisition Law, on 395-3455.


James D. Currie
Acting Administrator